

calendar year, the non-Defaulting Party may elect to exercise any or all remedies available to it, including but not limited to, the following:

- Terminate the Definitive Agreement.
- Prior to the commencement of construction by Seller, if Buyer is the Defaulting Party, Buyer will pay a Termination Payment equal to the costs reasonably incurred by Seller in the development of the Project plus a Breakage Fee equal to [\$10/kW] multiplied by the Guaranteed Capacity.
- Prior to the Initial Delivery Date, if Seller is the Defaulting Party, Seller will pay a Termination Payment equal to the undrawn portion of the Development Period Security and.
- Prior to the Initial Delivery Date, and after the commencement of construction by Seller, if Buyer is the Defaulting Party, Buyer will pay a Termination Payment of \$50 per kW multiplied by the Guaranteed Capacity as if such had occurred after the Initial Delivery Date.
- On and after the Initial Delivery Date, the Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the Settlement Amount is equal to the Losses or Gains, and Costs, expressed in U.S. dollars, which the Non-Defaulting Party incurs as a result of the liquidation of the transaction, as of the effective date of termination, where the Settlement Amount, Losses, Gain and Costs, have the meanings set forth in the Master Power Purchase & Sale Agreement published by EEI, or a similar master agreement. The Termination Payment shall be due to ~~or due from the~~ Non-Defaulting Party ~~as appropriate in all cases and in no event will the Non-Defaulting Party be required to pay its Gain to the Defaulting Party.~~
- ~~Exercise~~ Subject to the terms of the Definitive Agreement, exercise any other right or remedy available at law or in equity, other than specific performance.
- The non-Defaulting Party shall be entitled, at its option and in its discretion, to setoff against any amounts owed to the Defaulting Party by the non-Defaulting Party ~~or any of its Affiliates~~ under the Definitive Agreement or otherwise any amounts payable by the Defaulting Party to the non-Defaulting Party ~~or any of its Affiliates~~ under the Definitive Agreement or otherwise. This section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law or otherwise). Notwithstanding any provision to the contrary contained in the Definitive Agreement, the non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under this Definitive Agreement until the non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that all

obligations of any kind whatsoever of the Defaulting Party to make any payments to the non-Defaulting Party ~~or any of its Affiliates~~ under the Definitive Agreement or otherwise which are due and payable as of the effective date of termination have been fully and finally performed.

The rights and remedies of a Party pursuant to the Remedies Section of the Definitive Agreement shall be cumulative and in addition to the rights of the Parties otherwise provided in the Definitive Agreement.

Prior to the exercise by Buyer of any right to terminate the Definitive Agreement, Buyer shall provide all required notices to Seller, and, at the same time, to any lender to Seller of which Buyer shall have notice. Buyer shall accord any such lender the same opportunity to cure, on behalf of Seller, any default of Seller giving rise to such right to terminate as provided to Seller under the Definitive Agreement.

Force Majeure

“Force Majeure” shall mean any event or circumstance to the extent beyond the reasonable control of, and not the result of the fault or negligence of, ~~or caused by,~~ the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, including but not limited to: (1) acts of God, including but not limited to landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather related events; (2) fire or explosions; (3) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Initial Delivery Date; (4) sabotage, riot, acts of terrorism, war and acts of public enemy; ~~or~~ (5) restraint by court order or other governmental authority; or (6) failure or delay, notwithstanding all commercially reasonable efforts of a Party, in obtaining required Permits in a final, non-appealable form, provided that such failure or delay does not exceed six (6) months in the aggregate with respect to such Party. Force Majeure shall not include (i) a failure of performance of any Third Party, including any party providing electric transmission service or natural gas transportation, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above; ~~(ii);~~ (ii) economic hardship; and (iii) lack of need for, or the availability of more favorable terms for the purchase or sale of, any Product during the Services Term; ~~(iv)~~ (iv) failure to timely apply for or obtain Permits or (iii) breakage or malfunction of equipment, (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above).

A Party shall not be considered to be in default in the performance of its

obligations under the Definitive Agreement to the extent that the failure or delay of its performance is due to an event of Force Majeure; and the non-affected Party shall be excused from its corresponding performance obligations to the extent due to the affected Party's failure or delay of performance. Notwithstanding the foregoing, ~~(i) a failure to make payments accrued prior to the event of Force Majeure when due shall not be excused; and (ii) from and after the Initial Delivery Date, the unavailability of the Units due to Force Majeure shall not relieve Seller of its obligation to deliver all Products otherwise required to be delivered under the Definitive Agreement.~~

Metering

In accordance with applicable PJM procedures and requirements, Seller shall install, maintain, operate and replace (as needed) electric meters and back-up meters at the Delivery Point to determine energy at its sole cost and expense. The meters will be sealed by both Parties, which seals will only be broken by both Parties for inspection, testing or adjustment. The electric meters shall meet all specifications of PJM and shall be checked annually by Seller, who shall provide Buyer with not less than thirty (30) days prior written notice of such tests. Buyer will have the right to have a representative(s) present during such tests.

Either Party may from time to time request a retest of the meters if it reasonably believes that the meters are not accurate within the tolerance limits established by PJM or the applicable service provider. The requesting Party shall pay for any such retest and shall provide the other Party with not less than fourteen (14) days prior notice of such retest. Such other Party will have the right to have a representative present during such retest. If any tested or retested meter is found to be not accurate within the tolerance limits established by PJM or the applicable service provider, Seller shall promptly arrange for the correction or replacement of the meter, at its expense, and the Parties shall use the measurements from the back-up meters to determine the amount of the inaccuracy. If the back-up meters are found to be not accurate within the tolerance limits and the Parties cannot otherwise agree as to the amount of the inaccuracy, the inaccuracy will be deemed to have occurred during the period from the date of discovery of the inaccuracy to the earlier of (a) one-half of the period from such discovery to the date of the last testing or retesting of the meters or (b) one hundred eighty (180) days. Any amounts due by Buyer or to be refunded by Seller as a result of any meter that is not accurate within the tolerance limits will be invoiced by such Party within fifteen (15) days of the discovery of such inaccuracy, with payment due within thirty (30) days.

To support invoice settlement purposes, Seller shall provide Buyer with access to all real-time meters, billing meters and back-up meters (i.e., all metering). Seller shall authorize Buyer to view the Project's on-line meter

data and any gas real-time metering.

**Compliance with
Law,
Environmental
Risk and
Indemnity**

Seller, as owner and operator of the Project, will be responsible for complying with all applicable requirements of law, PJM and NERC, whether imposed pursuant to existing law or pursuant to changes enacted or implemented during the Contract Term, including all risks of environmental matters relating to the Unit(s) or the Project site. Seller will indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable law, or PJM or NERC requirements. For the avoidance of doubt, Seller will be responsible for procuring, at its expense, all permits, governmental approvals and emissions credits and allowances required for operation of the Unit(s) in compliance with law. Notwithstanding the foregoing, in the event that a change in law occurs which imposes future environmental compliance costs in the form of a Btu or carbon tax, Seller and Buyer shall treat the tax as a "pass-through" addition to the cost of energy under the Definitive Agreement.

**Credit
Requirements
(as of the Initial
Delivery Date)**

The amount of unsecured credit to be extended to Seller will be determined pursuant to Attachment 1 based on the senior unsecured long-term debt rating of Seller or its affiliate guarantying Seller's obligations (the "**Seller Credit Limit**"). The Seller Credit Limit may be set at zero, and may not exceed \$50,000,000. Buyer intends to compute a market value for the Products sold under the Definitive Agreement, with weekly collateral posting requirements (in excess of the Seller Credit Limit) tied to changes in market value of the Products. Without regard for the Seller Credit Limit in effect at any time, from and after the Initial Delivery Date Seller must provide Buyer a Letter of Credit in an amount equal to 10% of the then-effective Collateral Requirement (as defined below) (the "**Minimum Liquid Collateral**"). In addition to the Minimum Liquid Collateral, Seller will provide Buyer a Letter of Credit in an amount equal to the positive difference, if any, between the Collateral Requirement (minus the Minimum Liquid Collateral amount) and the Seller Credit Limit (the "**Additional Liquid Collateral**"). During each week during the Services Term, the MtM Value shall be calculated according to the formula set forth in Attachment 2 for the next twenty-four (24) months. Buyer shall be the calculation agent and will provide notice weekly to Seller of the Collateral Requirement amount to be posted by Seller. Within three (3) business day of such notice, Seller shall post the Additional Liquid Collateral or Seller shall return such collateral previously posted that is in excess of the sum of Buyer's then-required Minimum Liquid Collateral and Additional Liquid Collateral.

The “**Collateral Requirement**” for Seller at any point in time after the Initial Delivery Date is the lower of (i) the positive amount of the Marked-to-Market Value as determined pursuant to Attachment 2-2; and (ii) a maximum amount determined as \$200/kW (\$80/kW for intermittent renewable energy projects) times the Guaranteed Capacity; provided, in the event that Seller is not investment grade rated and does not provide a guarantee from an entity that is investment grade rated, the Collateral Requirement shall be \$200/kW (\$80/kW for intermittent renewable energy projects) multiplied by the Guaranteed Capacity for which Seller shall provide Buyer with a Letter of Credit.

Lien on Project

In addition to any other Collateral required to be provided by Seller, Seller shall grant to Buyer a perfected lien on and security interest in all of Seller’s right, title and interest in and to the Project, which lien shall be subordinate only to the lien, if any, granted to persons not related to Seller that provide construction or term financing for the Project. Such lien and security interest shall be created and evidenced by documentation satisfactory to Buyer.

Confidentiality

Seller shall maintain all commercial terms confidential for the greater of

- (1) the term of the Confidentiality Agreement dated _____ by and between Seller and Buyer, if any;
- (2) three years from the date of this Term Sheet; or
- (3) the Contract Term.

Neither Party shall disclose the terms or conditions of this Term Sheet to a third party (other than either Party’s employees, lenders, counsel, accountants, advisors or ratings agencies) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request applicable to such Party, or as Buyer deems necessary in order to demonstrate the reasonableness of its actions to duly authorized governmental or regulatory agencies, including, without limitation, the PSC, the Delaware Department of Natural Resources and Environmental Control, and any other regulatory agency which claims jurisdiction over the subject matter of the Definitive Agreement or its subject matter; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section. This confidentiality provision shall become binding upon delivery of the completed Term Sheet.

**Dispute
Resolution:**

All disputes that cannot be resolved after referral to senior management of the Seller and Buyer shall be resolved by arbitration conducted in Washington, DC under the rules of the American Arbitration Association before a panel of three (3) arbitrators.

**Other Terms
and Conditions**

The Parties will be expected to make customary representations and warranties.

The Definitive Agreement will be governed by Delaware law.

Seller will agree to maintain customary books and records, including without limitation, operating logs, meter readings and financial records and make such books and records available for audit.

Seller will agree to maintain adequate property and liability insurance.

Each Party will provide indemnities customary for transactions similar to the Transaction.

The right of Seller to assign the Definitive Agreement or to transfer control of the Units (~~directly or indirectly~~) to another person, whether or not affiliated, shall be subject to Buyer's consent, not to be unreasonably withheld upon a showing of the proposed assignee's technical and financial capability to fulfill the requirements of Seller. Change in the ownership of or the ownership interests in, Seller shall not be treated as either an assignment of the Definitive Agreement or a transfer of control of the Units for purposes of any such consent requirement. Assignment of the Definitive Agreement and liens upon the Units for purposes of project financing shall be permitted ; and Buyer will execute such additional consents as reasonably required by Seller in connection with such assignment; provided that Buyer shall not be required to consent to any additional terms or conditions, ~~including extension of the cure periods or additional remedies for lenders which materially diminish Buyer's rights or materially increase Buyer's obligations under the Definitive Agreement;~~ and provided further, Seller shall be responsible for Buyer's reasonable costs associated with review, negotiation, execution and delivery of such documents, including attorneys' fees.

Seller will agree that the Units and the Products will be free of liens other than permitted liens as agreed to by the Parties.

Each Party shall be responsible for taxes assessed upon it, including any new taxes, except carbon or Btu taxes, that may be imposed during the

Contract Term.

Interest shall accrue on all obligations not paid when due at the rate of ___% per annum. After the occurrence of an Event of Default, interest shall accrue on all obligations at the rate of ___% per annum.

Seller agrees to pay to the Buyer, upon written demand from the Buyer from time to time, the amount of all expenses, including reasonable attorneys' fees and expenses, paid or incurred by the Buyer (i) after any of the obligations are not paid or performed when due (whether by demand, acceleration or otherwise), which arise as a result of such failure to pay or perform, and (ii) after a default or an Event of Default shall occur, (iii) ~~in exercising or enforcing or consulting with counsel concerning any of its rights under the Definitive Agreement or under law~~ which arise as a result of such Event of Default. Seller also agrees to pay to the Buyer, upon written demand by the Buyer from time to time, interest on the outstanding amount of such expenses paid by the Buyer, from the date of the Buyer's demand for payment of such expenses until the same are paid in full, at the highest rate provided herein.

**Regulatory
Approval**

~~The occurrence of the Effective Date is subject to (i) Regulatory Approval~~ shall consist of approval of the terms of the Definitive Agreement without modification by the PSC, the Delaware Department of Natural Resources and Environmental Control, Energy Office or any other regulatory agency which claims jurisdiction over the contract, ~~and (ii) ("PSC Order").~~ The occurrence of the Effective Date is subject to Regulatory Approval and receipt by Buyer of a final, nonappealable order of PSC allowing Buyer to recover payments under the Definitive Agreement in utility revenue subject only to PSC review with respect to the reasonableness of Buyer's administration of the Definitive Agreement non-appealable PSC Order (not appealed within 30 days). If Regulatory Approval is not received ~~on or before June 30, 2007,~~ then either Party may within sixty (60) days after execution of the Definitive Agreement, a mutual right to terminate the Definitive Agreement, without liability or further obligation. In addition, if Buyer at any time during the Services Term is not permitted to recover fully in utility revenue all amounts payable under the Definitive Agreement, then Buyer to either party, shall exist provided that such right is exercised within thirty (30) days after the deadline. If the Effective Date is delayed by a timely appeal of the Regulatory Approval, the Effective Date shall occur on the date the PSC Order is upheld on appeal and is no longer subject to appeal; provided, if the Effective Date does not occur within [24] months of the PSC Order, either party (except for an appealing party) may terminate the Definitive Agreement without liability or further obligation upon thirty (30) days' prior by providing written notice to Seller the other party within the following thirty (30) days.

**Forward
Contract**

The Parties acknowledge and agree that the Definitive Agreement and the transactions consummated thereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Seller is a “forward merchant” within the meaning of the United States Bankruptcy Code.

**Non-Inclusive;
Non-Binding;
Definitive
Agreement**

This Term Sheet does not contain all matters upon which agreement must be reached in order for the Transaction to be completed. Except for the Confidentiality provision herein, this Term Sheet does not create and is not intended to create a binding and enforceable contract between the Parties with respect to the Transaction. Refer to ~~Sections VII.B., XIII and XVI of~~ the RFP for a description of the purpose and effect of this Term Sheet. A binding commitment with respect to the Transaction can only result from the execution and delivery of a Definitive Agreement satisfactory to Delmarva and the satisfaction of the conditions set forth therein, including the approval of such Definitive Agreement by all applicable governing and/or regulatory body(ies) and the management of Delmarva, which approval shall be in the sole subjective discretion of the respective governing and/or regulatory body(ies) and management.

Attachment 1 – Seller Credit Limit Calculation

Buyer shall determine the maximum amount of unsecured credit allowed as a share of Seller's (or its guarantor's) total tangible net worth, depending on the entity's long-term senior unsecured credit rating, as shown below. The amount of unsecured credit allowed shall be the product of the total tangible net worth (TNW) times that percentage specified below, up to the amount of the cap specified below applicable to given credit rating.

S&P Rating	Moody's Rating	Fitch Rating	Total Tangible Net Worth	Seller Credit Limit (Cap)
AAA to AA-	Aaa to Aa3	AAA to AA-	10%	\$50,000,000
A+ to A-	A1 to A3	A+ to A-	8%	\$40,000,000
BBB+ to BBB	Baa1 to Baa2	BBB+ to BBB	6%	\$30,000,000
BBB-	Baa3	BBB-	4%	\$20,000,000

If there is a difference among the ratings of the listed rating agencies, the lowest rating shall be used. Seller or the entity guarantying its obligations under the Definitive Agreement must have a credit rating from one of these three agencies, or provide 100% of the required security in the form of a letter of credit.

The Seller Credit Limit shall be recalculated, and the amount of the Letters of Credits covering the Minimum Liquid Collateral and the Additional Liquid Collateral shall be appropriately adjusted, based on Seller's (or the guarantor's) most recent fiscal year-end audited financial statements or within five (5) business days of any change in Seller's (or the guarantor's) long-term senior unsecured debt rating.

Attachment 2—Marked-to-Market Determination

The Marked-to-Market Value as of any week during the Services Term will be equal to the net sum of the following:

1. Net Capacity Value: the gross capacity value will be the PJM RPM capacity (or a mutually agreed-upon equivalent) for the delivery year times the contract UCAPNet Capability obligations expressed in kW. The gross capacity value will be measured for each month of the rolling 24-month period following the week for which the calculation is being made. To determine the Net Capacity Value, from such gross capacity value will be subtracted the aggregate capacity payments for each month of such rolling 24-month period expected under the Definitive Agreement for the Capacity Seller is obligated to deliver.
2. Net Energy Value: the gross energy value will be the NYMEX Henry Hub end-of-day monthly forward price in (\$/mmbtu) times an 8,000 BTU/kWh implied heat rate divided by 1000 times the anticipated quantity of energy to be delivered in each month of the rolling 24-month period following the week for which the calculation is being made. Delmarva reserves the right to change the implied heat rate subject to the nature of the PPA agreement. To determine the Net Energy Value, from such gross energy value will be subtracted the aggregate energy payments anticipated for the quantity of energy to be delivered in each month of the rolling 24-month period under the Definitive Agreement for the energy Seller is expected to deliver.

Attachment 3—Calculation of Monthly Contract Capacity Payment

For projects other than intermittent renewable energy projects, the bidder's proposed capacity payments will be multiplied by Delmarva's entitlement to capacity from the project times the lesser of the project's contract capacity and the project's rated summer net capability, which will then be multiplied by an Availability Adjustment Factor. The Availability Adjustment Factor ("AAF") will be the rolling average of the Monthly Adjusted Availability Factors ("MAAFs") for the previous 12 months, subject to the following: (a) it will be capped at 1.05 and (b) for each percentage that the rolling average of the MAAFs is below 0.90 for the previous 12 months, there will be a 3% reduction in the AAF (but the AAF shall never be less than 0.0). For example, if the 12-month rolling average of the MAAFs is 0.85, the AAF will be 0.75. A complete detailed definition will be set forth in the PPA.

The Monthly Adjusted Availability Factor ("MAAF") shall be the product of the Equivalent Availability Factor ("EAF") for the particular month multiplied by the Monthly Adjustment Factor ("MAF") divided by the Adjusted Target Equivalent Availability Factor ("ATEAF"). $MAAF = (EAF * MAF) / ATEAF$.

The ATEAF is equal to the bidder's annual Target Equivalent Availability Factor ("TEAF") with a seasonally adjusted target as follows:

<u>January-February</u>	<u>+3%</u>
<u>March-May</u>	<u>-3%</u>
<u>June-September</u>	<u>+3%</u>
<u>October-November</u>	<u>-3%</u>

For example, if the TEAF is 90%, the ATEAF for June would be 93%.

MEAF is the Equivalent Availability Factor ("EAF") for the month, except if the project's monthly average off-peak hourly EAF exceeds the monthly average on-peak hourly EAF, the EAF for on-peak hours will be used in determining MEAF for the month. For example, if the EAF in June is 90%, but the EAF in off-peak hours is 95% and the EAF in on-peak hours is 85%, the MEAF in June will be 85%.

MAF is the Monthly Adjustment Factor. Together, the MAF, the ATEAF, and the MEAF emphasize the higher value of available capacity and energy during peak seasonal and hourly periods.

MAF is as follows:

<u>January</u>	<u>1.0</u>
<u>February</u>	<u>1.0</u>
<u>March</u>	<u>0.9</u>
<u>April</u>	<u>0.8</u>
<u>May</u>	<u>0.8</u>
<u>June</u>	<u>1.2</u>
<u>July</u>	<u>1.3</u>
<u>August</u>	<u>1.3</u>
<u>September</u>	<u>1.2</u>

ATTORNEY-CLIENT PRIVILEGED

ATTORNEY WORK PRODUCT

<u>October</u>	<u>0.8</u>
<u>November</u>	<u>0.8</u>
<u>December</u>	<u>0.9</u>

A standard industry definition for EAF will be utilized and will be set forth in the PPA.

Example: ATEAF in June is 93%. MEAF in June is 85%. MAF= 1.2. MEAF= (.85*1.2)/.93=1.097.

For the first 12 operating months of the project, AAF shall be calculated by using historical operating data for the plant where available and by using proxy data for other months assuming that the plant has achieved the ATEAF for such months. For example, if the project achieves commercial operation in March and has operated through December, the capacity payments for December will be based on an AAF calculated with plant performance data from March through December with a MAAF of 1.0 for January and February.

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